

228538

LAW OFFICES OF
LOUIS E. GITOMER

LOUIS E. GITOMER
LOU_GITOMER@VERIZON.NET

MELANIE B. YASBIN
MELANIE@LGRAIL.LAW.COM

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4022
(202) 466-6532
FAX (410) 332-0885

December 27, 2010

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

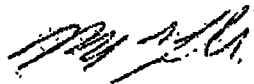
RE: Docket No. 42121, *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*; *Carolina Piedmont Division: Georgia Woodlands Railroad, LLC; Madison Railroad; Mohawk, Adirondack & Northern Railroad Corp.; Nashville and Eastern Railroad Corp.; New Hope & Ivyland Railroad; Pioneer Valley Railroad; R.J. Corman Railroad Company (Memphis); Seminole Gulf Railway L.P.; Sequatchie Valley Railroad Company; and South Branch Valley Railroad*

Dear Ms. Brown:

Enclosed for e-filing is the Reply of the Carolina Piedmont Division to the Motion to Compel filed by Total Petrochemicals USA, Inc.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Melanie Yasbin
Attorney for South Carolina Central
Railroad Company

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.; CAROLINA PIEDMONT DIVISION; GEORGIA
WOODLANDS RAILROAD, LLC; MADISON RAILROAD; MOHAWK, ADIRONDACK &
NORTHERN RAILROAD CORP.; NASHVILLE AND EASTERN RAILROAD CORP.; NEW
HOPE & IVYLAND RAILROAD; PIONEER VALLEY RAILROAD; R.J. CORMAN
RAILROAD COMPANY (MEMPHIS); SEMINOLE GULF RAILWAY L.P.; SEQUATCHIE
VALLEY RAILROAD COMPANY; AND SOUTH BRANCH VALLEY RAILROAD

CAROLINA PIEDMONT DIVISION'S REPLY TO MOTION TO COMPEL

Scott G. Williams Esq.
Senior Vice President & General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

Attorneys for: Carolina Piedmont Division

Dated: December 27, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42121

TOTAL PETROCHEMICALS USA, INC.

v.

CSX TRANSPORTATION, INC.; CAROLINA PIEDMONT DIVISION; GEORGIA
WOODLANDS RAILROAD, LLC; MADISON RAILROAD; MOHAWK; ADIRONDACK &
NORTHERN RAILROAD CORP.; NASHVILLE AND EASTERN RAILROAD CORP.; NEW
HOPE & IVYLAND RAILROAD; PIONEER VALLEY RAILROAD; R.J. CORMAN
RAILROAD COMPANY (MEMPHIS); SEMINOLE GULF RAILWAY L.P.; SEQUATCHIE
VALLEY RAILROAD COMPANY; AND SOUTH BRANCH VALLEY RAILROAD

CAROLINA PIEDMONT DIVISION'S REPLY TO MOTION TO COMPEL

South Carolina Central Railroad Company, Carolina Piedmont Division ("CPDR")
hereby replies to TOTAL Petrochemicals USA, LLC ("TPI") Motion to Compel Responses to
Complainant's First Discovery Requests to Shortline Railroad Defendants ("Motion to
Compel").

On November 19, 2010, the Surface Transportation Board (the "Board") granted a
motion for leave to file the Second Amended Complaint (the "Second Amended Complaint")
filed on October 4, 2010 and ordered that Answers be filed by December 9, 2010.¹ On October
4, 2010 TPI served its discovery requests on the General Manager of CPDR. An order
compelling discovery from CPDR is not appropriate at this time for three reasons: (1) CPDR has
not been properly served with the discovery requests and so the discovery clock has not begun to

¹ *TOTAL Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, Docket No. NOR 42121 (STB served November 19, 2010).

run; (2) CPDR is negotiating with TPI for a contract rate; and (3) the discovery requests are burdensome and overly broad.

On October 4, 2010, TPI served discovery and its Second Amended Complaint, by overnight express delivery, on CPDR's General Manager. But under 49 CFR 1111.3 service of a complaint must be on "the chief legal officer of each defendant". If service of the complaint must be on the chief legal officer, it would only make sense that service of any discovery requests must be made on the chief legal officer as well. CPDR's chief legal officer was not and has not been served with discovery.

Even if CPDR was properly served with TPI's discovery request, requiring CPDR to respond at this time would be a waste of resources in both dollars and man hours. CPDR and TPI are currently negotiating an agreement that would make discovery unnecessary. TPI came to CPDR when it filed its Motion for Leave to File Second Amended Complaint stating that TPI could dismiss CPDR from the complaint if they reached an agreeable contract. However, negotiations take time and the parties have had less than 20 business days to reach an agreement between the time CPDR became a party to this proceeding and the time the motion to compel was filed.

CPDR understands that TPI's opening evidence is due on February 16, 2011, but under a standard rate reasonableness procedural schedule the parties have 75 days for discovery. *See* 49 CFR 1111.8(a). Allowing 75 days from when the Board granted the motion for leave to file the Second Amended Complaint would put the close of discovery at February 2, 2011. This would not give TPI enough time to review the information and file its opening evidences, but asking CPDR to respond to the discovery request in the 20 day window given by TPI would be

enormously burdensome. TPI, through discovery, has asked CPDR to essentially turn over all of the information in its possession regarding its entire system. The following list is only a set of examples of the information sought by TPI: information on all traffic handled by CPDR and/or its subsidiaries or affiliates in the SARR states, including 44 specific characteristics of that traffic (Request for Production No. 8); all cycle times for all traffic handled by CPDR and/or its subsidiaries or affiliates in the SARR states (Request for Production No. 20); all agreements, bills from 2008 to present, Short Line density and other rail carriers density for all joint facility or joint use agreements between CPDR and/or its subsidiaries or affiliates and any other rail carrier in the SARR states (Request for Production No. 30).

CPDR is a division of a Class III rail carrier, the South Carolina Central Railroad, a RailAmerica subsidiary. TPI's definition of CPDR as "the Carolina Piedmont Division and/or its subsidiaries and affiliates" is overly broad if it is meant to include any other RailAmerica railroad. While CPDR is owned by a RailAmerica subsidiary, it does not have the ability to marshal the resources of RailAmerica at will. And thus should not be required to provide any information on discovery for any railroad in the RailAmerica family other than the South Carolina Central Railroad.

CONCLUSION

For the forgoing reasons, CPDR respectfully requests that the Board deny TPI's Motion to Compel.

Respectfully submitted,

Scott G. Williams Esq.
Senior Vice President & General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329

/s/ Louis E. Gitomer
Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(410) 296-2250
Lou_Gitomer@verizon.net

Attorneys for: CAROLINA PIEDMONT
DIVISION

Dated: December 27, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for all parties of record electronically or by first class mail postage pre-paid.

/s/ Louis E. Gitomer

Louis E. Gitomer

December 27, 2010